

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: <u>0 0 - 0 0 2</u>	2. STATE: Alaska
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE April 14, 2000	

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 1902(a)(13)(a) & 1902(a)(30) of the Social Security Act & <u>44 CFR 44.272 Title 42, Part 442, Subpart C "P & I"</u>	7. FEDERAL BUDGET IMPACT: \$9 a. FFY <u>00</u> \$12 million b. FFY <u>01</u> \$12 million "P & I"
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: 7 AAC 43.677(a) and 7 AAC 43.677(b) Attachment 4.19 - A Pages 22-23 AS 44.62.310 through "P & I" AS 44.62.312, and 7 AAC 43.670 through 7 AAC 43.672	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): New

10. SUBJECT OF AMENDMENT:
Establishing proportionate share incentive payments for publicly owned and operated hospitals

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT ☒ OTHER, AS SPECIFIED:
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL Does not wish to comment

12. SIGNATURE OF STATE AGENCY OFFICIAL: <u>Bob Labbe</u>	16. RETURN TO: Division of Medical Assistance P.O. Box 110660 Juneau, Alaska 99811-0660
13. TYPED NAME: Bob Labbe	
14. TITLE: Director, Division of Medical Assistance	
15. DATE SUBMITTED:	

17. DATE RECEIVED: <u>APR 12 2000</u>		18. DATE APPROVED: <u>Deemed Approved</u>	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: April 14, 2000 As Deemed Approved		20. SIGNATURE OF REGIONAL OFFICIAL: <u>Teresa L. Trimble</u>	
21. TYPED NAME: Teresa L. Trimble		22. TITLE: Associate Regional Administrator	

23. REMARKS:

4/10 Juneau
 (DATE) (CITY)
 "P & I" changes were authorized by the State on October 26, 2000

XIV. Proportionate Share Incentive Payments for Public Hospitals.

1. The department recognizes that many public hospitals provide basic support for community and regional health care to clients who would otherwise be unable to readily access needed inpatient hospital service. To ensure continued access, proportionate share incentive payments (Hospital Pro-Share payments) are provided to in-State public hospitals. At least annually the department will advise all such hospitals to formally request participation in the Hospital Pro-Share payment program.
2. A public hospital is one that:
 - ☐ is owned by a government entity that qualifies as a "unit of government" under 42 U.S.C. 1396b(w)(6)(A), and
 - ☐ is governed by a Board of Directors who serve under authority of a government entity, and
 - ☐ has board meetings that satisfy the Alaska law about Open Meetings of Governmental Bodies AS 44.062.310 - AS 44.62.312, and
 - ☐ is operated directly by a government entity, or is operated under a management contract that rests responsibility and authority for increase or decrease in net assets and net revenues with a government entity.
3. Hospital Pro-Share payments shall be paid at least annually during each Federal Fiscal Year based on legislatively approved appropriations and the State's determination of the amount of funding available for the Hospital Pro-Share payments. The State recognizes that occupancy is the key measure in determining the payment for each participating hospital. Specifically, a hospital with a low occupancy level tends to be more fiscally vulnerable compared to a hospital with a high occupancy level. Each participating hospital will be assigned an occupancy weight as follows:

<u>Occupancy Level</u>	<u>Occupancy Weight</u>
40 percent or more	1.00
30 - 39 percent	1.05
20 - 29 percent	1.10
10 - 19 percent	1.15
less than 10 percent	1.20

The occupancy level used to determine a hospital's occupancy weight will be the percent that results from dividing the total number of patient days (~~Total All Patients, line 12, column 6~~)
"P & I"
by the total number of available bed days (~~Bed Days Available, line 12, column 2~~) from
"P & I"
~~worksheet S-3 of~~ disclosed in the Medicare cost report for the hospital's fiscal year ending 24
"P & I"
months before the payment.

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A payment per occupancy weight is determined by dividing total available funds by the ~~total~~
"P & I"
sum of the occupancy weights assigned to each participating hospital. The resulting amount
"P & I"

is then applied to the participating hospital's assigned occupancy weight. Hospital Pro-Share payments will be subject to the Medicare upper limit requirement at 42 CFR 447.272 and will be made only after the State's analysis assures that the aggregate Medicare upper limit will not be exceeded. Payments made during FFY 2000 may not exceed the Medicare upper limit calculated from April 1, 2000 through September 30, 2000.

"P & I"

4. Hospital Pro-Share payments will not be subject to settlement (payment at the lower of costs or rate), or to state law governing payment rates AS 47.07.070 or regulations in 7 AAC 43.670 - 7 AAC 43.709.

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EMERGENCY REGULATIONS

Register 2000 DEPARTMENT OF HEALTH AND SOCIAL SERVICES

7 AAC 43 is amended by adding a new section to read:

7 AAC 43.677, METHODOLOGY AND CRITERIA FOR PROPORTIONATE SHARE PAYMENTS TO PUBLIC HOSPITALS. (a) The division may make a hospital proportionate share payment under contract with a public hospital that qualifies under (b) of this section. The division may make a hospital proportionate share payment to, and receive and expend a funding transfer of public funds from, qualified providers to:

(1) ensure continued access to inpatient hospital services at public hospitals that provide basic support for community or regional health care, and

(2) secure for the state in accordance with AS 47.07.040, the optimum federal participation for inpatient hospital services in the state's Medical Assistance program.

(b) A hospital that meets the requirement of the subsection may qualify as a proportionate share hospital by making application to the division on a form and by the date designated by the division. A hospital qualifies to receive a proportionate share payment only upon entering into a written agreement that controls the conditions for the transfer of funds. A hospital that submits an application under this section attests that it meets the following participation criteria and is:

- (1) enrolled as a Medicaid provider of inpatient hospital services;
- (2) located within the State of Alaska; and
- (3) a publicly governed facility that qualifies as a "unit of government" for the purposes of 42 U.S.C. 1396b(w)(6)(A),

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Section

310. Government meetings public

312. State policy regarding meeting

Sec. 44.62.310. Government meetings public. (a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law.

Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any voters required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at the executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion.

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional privileges or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; or

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be

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used. Subject to this publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be used in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and in the public entity by voiding the action. In making this determination, the court shall consider at least the following:

- (1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if this action is voided;
 - (2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;
 - (3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;
 - (4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;
 - (5) the amount of that has passed since the action was taken;
 - (6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;
 - (7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;
 - (8) the degree to which violations of this section were wilful, flagrant, or obvious;
 - (9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).
- (g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies, or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members if a subcommittee or other subordinate unit of a government body if the subordinate unit consists of two or more members.

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only

authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

- (2) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am ch 189 SLA 1976; am §§2, 3 ch 54 SLA 1985; am § 2 ch 201 SLA 1990; am § 7 ch 74 SLA 1991; am §§ 2 – 8 ch SLA 1994)

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Section

692. (Repealed)
 693. Facility audits and desk reviews
 694. (Repealed)
 695. OBRA '87-related continuing education for nurse aides
 696. (Repealed)
 697. General procedures applicable to informal commission proceedings
 698. (Repealed)

Section

699. (Repealed)
 700. (Repealed)
 701. Procedure for establishment of rates
 702. (Repealed)
 703. Administrative appeal
 704. Appeal procedures
 708. Exceptional relief to prospective payment rate setting
 709. Definitions

Editor's note: 7 AAC 43.675 – 7 AAC 43.705 were repealed by the Department of Health and Social Services in an emergency action effective 6/27/84, Register 91. The Medicaid Rate Commission adopted 7 AAC 43.670-7 AAC 43.709 as emergency regulations, effective 6/27/84, Register 91, to replace the repealed regulations. When the Medicaid Rate Commission emergency regulations were made permanent and amended, effective 10/21/84, Register 92. the substance of the regula-

tions was reorganized and renumbered. The numbering and organization of the material in 7 AAC 43.670-7 AAC 43.709, as of 10/21/84, bears no resemblance to the numbering and organization of that material before 10/21/84. Therefore, the history notes for 7 AAC 43.670-7 AAC 43.709 do not reflect the history of those sections before 10/21/84, and references to the emergency repeal of the DHSS regulations on 6/27/84 have been deleted.

7 AAC 43.670. **PURPOSE.** The purpose of 7 AAC 43.670-7 AAC 43.709 is to implement the provisions of AS 47.07.070-47.07.900. (Eff. 10/21/84, Register 92; am 8/6/92, Register 123; readopt 8/7/96, Register 139)

Authority: AS 47.05.010
 AS 47.07.070

AS 47.07.079
 AS 47.07.180
 AS 47.25.195

Editor's note: Effective 8/7/96, Register 139, the Department of Health and Social Services readopted 7 AAC 43.670 in its entirety, without change, under

AS 47.07 and AS 47.25. Executive Order No. 72 transferred certain rate-setting authority to the department.

7 AAC 43.672. **APPLICABILITY.** (a) All health facilities seeking payment from the Department of Health and Social Services for services provided to Medicaid recipients in the State of Alaska are subject to the provisions of 7 AAC 43.709.

- (b) To receive a change in a prospective payment rate, a health facility must obtain the department's approval in accordance with the procedures set out in 7 AAC 43.670-7 AAC 43.709. (Eff. 10/21/84, Register 92; am 8/6/92, Register 123; readopt 8/7/96, Register 139; am 12/27/96, Register 140)

Authority: AS 47.05.010

AS 47.07.070
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